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1992/02/10

EMBASSY OF THE
UNITED STATES OF AMERICA

February 10, 1992

Excellency:

I have the honor to refer to the October 1990 bilateral civil aviation negotiations conducted between representatives of the Government of the United States of America and the Government of the People's Republic of China. In light of the understandings reached at those negotiations, I have the honor to propose that the 1980 Agreement between the Government of the United States of America and the Government of the People's Republic of China relating to Civil Air Transport with annexes and exchanges of letters, as amended, (hereinafter referred to as the "Agreement") be further amended as described below.

His Excellency

Tian Zengpei,

Vice Minister of Foreign Affairs of
The People's Republic of China.

1. ROUTE RIGHTS

Annex I of the Agreement shall be replaced by a revised Annex I which is appended to this note as Attachment I.

2. CAPACITY ARRANGEMENT

Annex V of the Agreement shall be replaced by a revised Annex V which is appended to this note as Attachment II.

3. DESIGNATIONS

Paragraph (1) of Article 3 of the Agreement relating to designation shall be replaced by the following:

"(1) Each party shall have the right to designate in writing through diplomatic channels to the other party, three (3) airlines to operate the agreed services on the specified routes, and to withdraw or alter such designations. One airline may be

designated for each of the three routes set forth in Annex I of this Agreement. The same or a different airline may be designated for each route. The airline(s) designated for routes 1 and 2 may operate combination or all-cargo services or both. An airline designated for the third route described in Section III of Annex I may operate all-cargo service only."

4. AVIATION SECURITY

Article 8 of the Agreement relating to "Aviation Security" shall be replaced by the following:

"ARTICLE 8
AVIATION SECURITY

- (1) In accordance with their rights and obligations under international law, the parties reaffirm that their obligation to protect, in their mutual relationship, the security of civil aviation against acts of unlawful interference forms an integral part of the Agreement.

(2) The parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of aircraft and other unlawful acts against the safety of passengers, crew, aircraft, airports and air navigation facilities and any other threat to aviation security.

(3) The parties shall act in full conformity with the provisions of the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970, and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, to the extent that these provisions are ratified by the parties.

(4) The parties shall, in their mutual relations, act in conformity with the Aviation Security Standards (except to the extent to which a party has filed a difference thereto in accordance with the Convention on International Civil Aviation) and, so far as they are applied by them, the recommended practices established by the International Civil Aviation Organization and designated as annexes to the Convention on International Civil Aviation; and shall require that operators of aircraft of their registry, operators who have their principal place of business or permanent residence in their territory, and operators of airports in their territory, act in conformity with such aviation security provisions.

(5) Each party agrees to observe the security provisions required by the other party for entry into the territory of that other party and to take adequate measures to protect aircraft prior to and during boarding or loading and to inspect passengers, crew, their carry-on items as well as cargo and aircraft stores prior to boarding or loading. Each party shall also give positive consideration to any request from the other party for special security measures to meet a

(6) When an incident or threat of an incident of unlawful seizure of aircraft or other unlawful acts against the safety of passengers, crew, aircraft, airports and other navigation facilities occurs, the parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

(7) When a party has reasonable grounds to believe that the other party has departed from the aviation security provisions of this article, the aeronautical authorities of that party may request immediate consultations with aeronautical authorities of the other party. Failure to reach a satisfactory agreement within 15 days from the date of such request, or an urgent threat to the security of international civil aviation, will constitute grounds for application of Article 4 of the Agreement."

5. COOPERATIVE SERVICE ARRANGEMENTS

Article 11 of the Agreement relating to "Market Access" shall be amended to add the following paragraph (5):

"(5) The parties agree to approve cooperative service arrangements negotiated on reasonable commercial terms between their airlines. The types of arrangements that will be approved include wet leases, blocked space arrangements and code-sharing. However, approvals will not be granted for arrangements involving the carriage of cabotage traffic, pooling or revenue-sharing arrangements."

I have the further honor to propose that if the foregoing proposal is acceptable to your government, this note with its attachments and your Excellency's note in reply indicating such acceptance shall constitute an agreement between our two governments, which shall enter into force on the date of your Excellency's note. Upon entry into force, this Agreement shall supersede the protocol amending the Agreement, signed at Beijing August 19, 1982.

Accept, Excellency, the renewed assurances of my highest consideration.

J. Stephen Ray

ATTACHMENTS

ATTACHMENT I

ANNEX I 1/, 2/, 3/

I. FIRST ROUTE

A. For the United States of America:

One airline designated by the United States of America shall be entitled to operate the agreed services with full traffic rights on the following route, in both directions:

New York, Chicago, San Francisco, Los Angeles, Honolulu, Tokyo or another point in Japan, Shanghai, Guangzhou, Beijing.

B. For the People's Republic of China:

One airline designated by the People's Republic of China shall be entitled to operate the agreed services with full traffic rights on the following route, in both directions:

Beijing, Guangzhou, Shanghai, Tokyo or another point in Japan, Honolulu, Los Angeles, San Francisco, Chicago, New York. 4/ Anchorage, Fairbanks, and/or a point in Japan other than Tokyo and Osaka may be used as technical stops in both directions on this route.

II. SECOND ROUTE

A. For the United States of America:

A second airline designated by the United States of America shall be entitled to operate the agreed services with full traffic rights on the following route, in both directions:

Chicago, San Francisco, Los Angeles,
Seattle or Honolulu, Tokyo or another
point in Japan, Shanghai, Guangzhou,
Beijing.

B. For the People's Republic of China:

A second airline designated by the
People's Republic of China shall be entitled
to operate the agreed services with full
traffic rights on the following route, in both
directions:

Beijing, Guangzhou, Shanghai, Tokyo or
another point in Japan, Honolulu or
Seattle, Los Angeles, San Francisco,
Chicago. 4/ Anchorage, Fairbanks,
and/or a point in Japan other than
Tokyo and Osaka may be used as
technical stops in both directions on
this route.

III. ALL-CARGO ROUTE

A. For the United States of America:

A third airline designated by the United States of America shall be entitled to operate all-cargo services with full traffic rights from any point or points in the United States, via any intermediate points to any point or points in the People's Republic of China open to scheduled international operations, and beyond to any points outside the People's Republic of China. Absent the designation of a third carrier, the United States of America may grant permission to one of the U.S. airlines designated on the first or second route to operate all-cargo services on this route.

B. For the People's Republic of China:

A third airline designated by the People's Republic of China shall be entitled to operate all-cargo services with full traffic rights from any point or points in the People's Republic of China, via any

intermediate points to any point or points in the United States open to scheduled international operations, and beyond to any points outside the United States. Absent the designation of a third carrier, the People's Republic of China may grant permission to one of the Chinese airlines designated on the first or second route to operate all-cargo services on this route.

IV. EXTRA SECTION

In case any of the designated airline(s) of either party desires to operate additional sections on its specified route(s), it shall submit application to the aeronautical authorities of the other party three (3) days in advance of such operation, and the additional sections can be commenced only after approvals have been obtained therefrom.

V.

TRAFFIC RIGHTS IN JAPAN/STOPOVER RIGHTS IN THE
UNITED STATES 5/ AND 6/

A. For the United States of America:

The U.S. designated airlines shall be allowed to enjoy traffic rights in Japan on all services.

B. For the People's Republic of China:

(1) The Chinese designated airlines shall be allowed to enjoy traffic rights in Japan on all services.

(2) In case it is not possible for any of the Chinese designated airlines to fully exercise traffic rights in Japan, the following provisions shall apply:

(A) Subject to the limits specified in paragraph (B) below, the designated airlines of China shall be entitled to enjoy full stopover rights at all United States points on the specified routes in respect of all international stopover traffic not involving carriage of cabotage traffic.

(B) If a Chinese designated airline operates any frequencies with traffic rights through Tokyo or a point service, the number of frequencies entitled to stopover rights by the said airline shall be reduced by the same number. If any U.S. designated airline operates any U.S.-China non-stop frequencies, the stopover rights of the Chinese designated airline operating on that route shall be reduced by the same number of frequencies.

Notes:

- 1/ Each designated airline may at its option omit any point or points on the above routes on any or all flights in either or both directions, provided, however, that the agreed service it operates begins or terminates at a point on the specified route in the territory of the party designating the airline.
- 2/ Before operation of service through another point in Japan, referred to in Sections I and II of this Annex, that point shall be agreed upon by the parties. If a designated airline of either party desires to change the point served in Japan, the aeronautical authorities of the party designating the said airline shall furnish six (6) months' notice to the aeronautical authorities of the other party. Such change shall be subject to the concurrence of that other party.

- 3/ Subject to the provisions of Annex V, the designated airline(s) of each party may make a change of gauge in the territory of the other party or at an intermediate point or points on the specified route(s) provided that:
- (A) Operation beyond the point of change of gauge shall be performed by an aircraft having capacity less, for outbound services, or more, for inbound services, than that of the arriving aircraft.
- (B) Aircraft for such operation shall be scheduled in coincidence with the outbound or inbound aircraft, as the case may be, and may have the same flight number; and
- (C) If a flight is delayed by operational or mechanical problems, the onward flight may operate without regard to the conditions in subparagraph (B) of this paragraph.

- 4/ The People's Republic of China may add a total of two intermediate or beyond points of its own choosing to its routes. These two points may be served with full traffic rights and may be added to a single route or allocated at the discretion of China between routes 1 and 2.
- 5/ The parties agree that the letters exchanged on September 8, 1980, between Mr. Lin Zheng and Mr. B. Boyd Might relating to Japan traffic rights are hereby superseded. The People's Republic of China shall be entitled to select point services equal to the difference between the number of Japan frequencies operated by the U.S. designated airline(s) and the number of Japan frequencies authorized for the Chinese designated airline(s). The term "point service" means one weekly frequency with full traffic rights at a point. The Chinese designated airline(s) shall be entitled to operate such point services at one or more intermediate and/or beyond points at the sole discretion of the People's Republic of China. A list of

intermediate and/or beyond points so selected shall be furnished to the Government of the United States through diplomatic channels not later than 60 days prior to the commencement of operation. The number of point services operated by the Chinese designated airline(s) shall be reduced by one for each new Japan frequency which the Chinese designated airline(s) is authorized to operate subsequent to the selection of point services.

- 6/ For the purpose of this section, the term "stopover rights" shall mean the right for designated airlines of China to unload the traffic carried on the agreed services at one point in the territory of the other party and thereafter load such traffic on the agreed services for onward carriage to any point on the specified route.

ATTACHMENT II

ANNEX V

CAPACITY AND CARRIAGE OF TRAFFIC

(1) The parties agree that during 1991 to 1996, each party may operate the number of weekly frequencies provided for in the provisions below. A party may allocate to its designated airlines the frequencies provided by this section as it wishes.

(A) Phase 1 (1991-1992) - Designated airlines of each party may operate in total up to eighteen weekly roundtrip frequencies. During Phase 1, of the eighteen available weekly frequencies, no more than fourteen may be used for combination services, and no more than four weekly roundtrip frequencies may be operated on the all-cargo route described in Annex I, Section III.

(B) Phase 2 (1993-1994) - Designated airlines of each party may operate in total an additional two weekly roundtrip frequencies. During Phase 2, of the twenty available weekly frequencies, there shall be no limitation on the number of frequencies that may be used for combination service, and no more than six roundtrip frequencies may be operated on the all-cargo route described in Annex I, Section III.

(C) Phase 3 (1995-1996) - Designated airlines of each party may operate in total an additional seven weekly roundtrip frequencies. During Phase 3, of the twenty-seven available weekly frequencies, there shall be no limitation on the number of frequencies that may be used for combination or all-cargo service. The parties will discuss before the end of 1995, and will endeavor to conclude before the end of 1996, a capacity arrangement to meet increased market needs beyond 1996. After 1996, in no event shall the number of authorized weekly frequencies be decreased below Phase 3 levels.

(2) In consideration of paragraph 1 of this annex, relating to capacity arrangements, the right to bank unused frequencies shall be immediately terminated and previously banked frequencies shall be eliminated.

(3) With a view to realizing the objectives set forth in Article 12, paragraph (2) of this Agreement, the parties agree that there should be a reasonable balance of the traffic carried by their respective designated airline(s) on the specified route(s), in terms of number of passengers and tons of cargo taken up and put down in the territory of the other party.

The consultations referred to in Article 12, paragraph 6, shall take place as soon as possible, and in no event later than thirty (30) days following the date of receipt of the request by the latter party. The parties shall undertake to reach agreement within thirty (30) days as to effective measures for remedying the imbalanced situation and fully implement such agreed measures. In considering the measures to be undertaken, the parties shall take into account all relevant factors, including commercial decisions of the designated airlines, load factors and actions of third parties. In case the agreed measures fail to remedy the imbalance within

three months after their implementation, the parties shall meet together to look into the cause of such failure and agree upon measures for remedying the imbalance situation. In case the parties fail to reach agreement on effective remedial measures, they shall look into the cause of the imbalance and consider amendments to this agreement which may be required to eliminate such cause.

(4) The provision of paragraph (3) of this Annex is valid for three years from the date of commencement of any service under this agreement, as amended. Not later than six months prior to the end of this three-year period, the parties shall consult with a view to agreeing to the means to achieve reasonable balance of traffic referred to in paragraph (3) of this Annex.

H.E. Stapleton Roy

Ambassador Extraordinary and Plenipotentiary
of the United States of America
to the People's Republic of China

Excellency:

I have the honor to acknowledge receipt of your note of February 10, 1992, which reads as follows:

[The Chinese translation of the United States Embassy note dated February 10, 1992, is identical in all substantive respects to the English text.]

I have the honor to confirm acceptance of your Excellency's note, on behalf of the People's Republic of China, and to confirm that your Excellency's note and this reply shall constitute an agreement between our two governments which shall enter into force on the date of this reply.

[Complimentary close]

Tian Zengpei

Vice Minister of Foreign Affairs of
The People's Republic of China

Beijing
February 10, 1992

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... of the Department
... that it is a correct translation...
... to the best of my knowledge and
dated February 16, 1992 Pilar Rodriguez
Chief, Translation Unit